



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO ELECTRONIC DATA SYSTEMS, INC. REGISTRATION NUMBER 30142

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1309 and 10.1-1316, between the State Air Pollution Control Board and Electronic Data Systems, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Electronic Data Systems, Inc." means Electronic Data Systems, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Electronic Data Systems, Inc. facility, located in Mecklenburg County, Virginia.

8. “BRRO” means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
9. “O & M” means operations and maintenance.
10. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 Chapter 10 through 80.
11. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 et. seq.) of Title 10.1 of the Code of Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Electronic Data Systems, Inc. owns and operates a facility located in Clarksville, Virginia.
2. On September 23, 2008, DEQ staff conducted a site suitability evaluation of the Electronic Data Systems, Inc. facility located at 250 Burlington Drive in Clarksville, Virginia. At the time of this evaluation, it was determined that construction of a stationary source commenced prior to obtaining a permit to construct and operate. During this site visit it was noted that nine Caterpillar diesel emergency generators had been installed. Seven of the generators were rated at 20.475 MMBtu/hr, one generator was rated at 13.2 MMBtu/hr and one generator was rated at 2.52 MMBtu/hr.
3. On September 25, 2008, BRRO received a Form 7 permit application from Electronic Data Systems, Inc.
4. On February 11, 2009, DEQ issued a Notice of Violation to Electronic Data Systems, Inc. for commencing construction of a stationary source prior to obtaining a permit to construct, which is outlined in 9 VAC 5-80-1120A, of the State Air Pollution Control Board Regulations.
5. Electronic Data Systems, Inc. has corrected the deficiency cited in the Notice of Violation. On December 18, 2008, a stationary source permit to construct and operate a data center emergency electric generating facility was issued. The permit includes eight generators rated at 20.475 MMBtu/hr, one generator rated 13.2 MMBtu/hr and one generator rated at 2.52 MMBtu/hr.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§10.1-1309 and 10.1-1316 C., orders Electronic Data Systems, Inc., and Electronic Data Systems, Inc. voluntarily agrees, to pay a civil charge of \$9,477.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia,” delivered to:

Receipts Control
Department of Environmental Quality
PO Box 1104
Richmond, Virginia 23218

Electronic Data Systems, Inc. shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this paragraph.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Electronic Data Systems, Inc., for good cause shown by Electronic Data Systems, Inc., or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Electronic Data Systems, Inc. by DEQ on February 11, 2009. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Electronic Data Systems, Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Electronic Data Systems, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Electronic Data Systems, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Electronic Data Systems, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Electronic Data Systems, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Electronic Data Systems, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Electronic Data Systems, Inc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Electronic Data Systems, Inc.. Notwithstanding the foregoing, Electronic Data Systems, Inc. agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Electronic Data Systems, Inc.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Electronic Data Systems, Inc., from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below Electronic Data Systems, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of APRIL, 2009.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
Department of Environmental Quality

Electronic Data Systems, Inc. voluntarily agrees to the issuance of this Order.

By: R. P. T.

Date: 3-26-09

Commonwealth of Virginia, City/County of Medfordburg

The foregoing document was signed and acknowledged before me this 26th day of

March, 2009, by Rick P. Tompkins, who is
(name)

Facilities Manager of Electronic Data Systems, Inc. on behalf of the Corporation.
(title)

Dana D. Murphy Reg. No. 185910
Notary Public

My commission expires: 5/31/2010

